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December 10, 2014

**VIA EMAIL**

Dr. Vincent Miles  
Champaign, Illinois  
miles.v@aol.com

Re: FOIA Request of December 3, 2014  
Oswego Community Unit School District No. 308

Dear Dr. Miles:

Please be advised that this law firm represents Oswego Community Unit School District No. 308 (herein the "School District"). This letter is in response to your FOIA request sent via email on December 3, 2014. You attached to that email a six-page "Dear FOIA Officer" form letter. In that form letter, you requested "closing records for each debt issuance of this public body since January 1, 1984 through today." Your letter further defined that request by stating:

A "debt issuance" is defined as 1) a bond (referendum building bond, fire prevention & safety bond, tort judgment bond, working cash fund bond, funding bond, alternate revenue bond, revenue bond, refunding bond, and other types of long-term debt), 2) a debt certificate, 3) a tax anticipation warrant or note, and 4) other miscellaneous debt instruments.

The "closing records" for each debt issuance are broken down into three subcategories: 1) the bond transcript files collected and executed before or at the time of closing, 2) the engagement contracts (including attachments and/or exhibits) with professional service providers such as underwriter, financial advisor, rating agency, bond counsel, disclosure counsel, and any other firm who is reimbursed from either the gross proceeds of the issuance or directly by the issuer, and 3) the pre-closing written communication identifying for the various parties the identified list of closing records which will be assembled into the final closing transcript.

## **RESPONSE**

You are essentially requesting all records falling within the category of debt issuance within the last thirty years. It would be unduly burdensome to the School District's operations to assemble all of the documents that might be responsive to these requests, for the reasons set forth below.

Documents that fall into these categories would be stored in multiple locations, by the School District as well as other firms, and would constitute a great number of documents totaling thousands of pages. It would require extensive time on the part of School District personnel to research all such debt issuances in the past thirty years, ascertain the location of any records, and obtain or produce copies. Although your request claims that most of these documents are likely stored in electronic format on compact discs (CD-ROMs), that is certainly not the case for issuances before the year 2000 at the earliest, and likely later. Even for debt issuances after the year 2000, it would be unduly burdensome to locate all such records and obtain or produce copies. Records stored by third-party law firms or other firms would require extensive time on the part of those firms' personnel to research, locate, and obtain or produce copies. Such time and expenses would be billed to the School District at rates that far exceed the reimbursement that is available under the Act.

The burden on the School District to produce all of this information outweighs the public interest in it because the School District and the Illinois State Board of Education already publish detailed financial information in standardized forms, such as budgets and audits/annual financial reports that are available on the Illinois State Board of Education website. Furthermore, most older debt issuances are likely repaid or refinanced by this time.

In addition, pursuant to Sections 2(h) and 3.6 of the Act, your request is a "voluminous request" because it "requires the compilation of more than 500 letter or legal-sized pages of public records." A typical set of closing documents for a single debt issuance totals approximately 500 pages. Please be advised that the amendment to the Act that added these sections, Public Act 98-1129 (previously known as House Bill 3796), went into effect on December 3, 2014, the day of your request. I have confirmed this with an attorney in the office of the Public Access Counselor ("PAC") at the Office of the Illinois Attorney General. Consequently, Section 3.6(a) requires the School District to inform you that:



- i. the School District is treating the request as a voluminous request;
- ii. the School District is doing so because this request would require the compilation of more than 500 letter or legal-sized pages of public records ;
- iii. you must respond to this letter (directly to me as noted below) within 10 business days after this response was sent, i.e. by December 24, 2014, and specify whether you would like to amend the request in such a way that the public body will no longer treat the request as a voluminous request (this process is similar to the process of conferring in an attempt to reduce the request to manageable proportions that is required for unduly burdensome categorical requests);
- iv. if you do not respond within 10 business days as stated above, or if the request continues to be a voluminous request following your response, the School District may respond to the request and assess any fees it charges pursuant to Section 6 of this Act;
- v. the School District has 5 business days after receipt of your response, or 5 business days from the last day for you to amend the request, whichever is sooner, to respond to the request;
- vi. the School District may request an additional 10 business days to comply with the request;
- vii. you have a right to seek review of the School District's determination by the Public Access Counselor as described at the end of this letter; and
- viii. if you fail to accept or collect the responsive records, the School District may still charge you for its response pursuant to Section 6 of this Act and your failure to pay will be considered a debt due and owing to the School District and may be collected in accordance with applicable law.

The definition of "voluminous request" contains an exception for "a request made by news media and non-profit, scientific, or academic organizations if the principal purpose of the request is: (1) to access and disseminate information concerning news and current or passing events; (2) for articles of opinion or features of interest to the public; or (3) for the purpose of academic, scientific, or public research or education." Similarly, the Act defines "Commercial purpose" as "the use of any part of a public record or records, or information derived from public records, in any form for sale, resale, or solicitation or advertisement for sales or services," with certain exceptions based on the "principal purpose" of "requests made by news media and non-profit, scientific, or academic organizations." 5 ILCS 140/2(c-10). Your form letter asked "Please treat this e-mail as a non-commercial Freedom of Information Act request."



In addition, please be advised that Section 6 of the Act allows the School District to charge a commercial or voluminous requester for certain fees, costs, and personnel hours in connection with the request. A fee reduction or waiver is possible if the requester states the specific purpose for the request and indicates that a waiver or reduction of the fee is in the "public interest" as defined in that Section.

At this time, you have not provided sufficient information to classify this as a non-commercial request, as exempt from treatment as a voluminous request, or as being in the "public interest" for the waiver or reduction of any fees.

You stated that "we are conducting research on the debt issuance practices of certain non-state, non-county public bodies in Illinois such as school districts, park districts and municipalities-villages." Your form letter does not state who "we" is, other than noting the "several assistants" who are "working on this project." Your form letter does not state any affiliation with any news media, non-profit, scientific, or academic organization, or any formal organization whatsoever. Your form letter also does not state a specific purpose for this request. Attorney Richard T. Petesch of this law firm emailed you on December 3, 2014, at 3:52 PM, under the subject heading "FOIA Requests" asking you to phone or write with a further explanation. To date, you have not responded. In light of this, as well as our knowledge that you sent this request to many (and possibly all) Illinois public school districts, and your letter's reference to "park districts and municipalities-villages" as well, the School District will treat this as voluminous request and a commercial request unless you provide additional information if you choose to confer and reduce/amend the request as described below.

#### **OPPORTUNITY TO CONFER AND REDUCE/AMEND**

This letter shall serve as a denial of the request as stated above unless you contact me by December 24, 2014, for the dual purposes of (i) conferring and reducing your unduly burdensome categorical request to manageable proportions and (ii) amending your request in such a way that it will no longer be a voluminous request. If you wish to confer with the School District to do so, you are directed to contact me via email at bbare@whittlaw.com or by phone at 630-897-8875. If you do not contact me by December 24, 2014, this letter may be considered a denial of this categorical request by Dr. Matthew Wendt,



Superintendent, for the reasons described above, and no further response will be made.

### **IN THE EVENT OF DISCLOSURE**

You have requested documents be produced in the Portable Document Format ("PDF"). The Act presently provides "[w]hen a person requests a copy of a record maintained in an electronic format, the public body shall furnish it in the electronic format specified by the requester, if feasible." 5 ILCS 140/6. In the event that you are willing to confer and reduce/amend the request and the School District discloses any records in electronic format, they will be disclosed in the format in which they are presently stored.

Your form letter further requested that "we ask . . . nay, beg . . . you to please follow the proposed directory hierarchy and file naming conventions," and proceeded to outline a "suggested directory structure" with a "suggested file naming convention" utilizing "the 11-digit ISBE 'RCDTS' code assigned to your district" and "one or more descriptors" for "type of debt (BONDS, DebtCert, TAWs, TANs, Other) and calendar year of issuance."

Please be advised that the School District will not undertake to create any new folders, file names, records, or organizational structure. The Act provides that "[e]ach public body shall make available to any person for inspection or copying all public records, except as otherwise provided in Section 7 of this Act." 5 ILCS 140/3(a). It does not require public bodies to prepare new records or documents that do not already exist, nor does it require public bodies to fill out forms or surveys. See 5 ILCS 140/1 ("[t]his Act is not intended to create an obligation on the part of any public body to maintain or prepare any public record" not already maintained or prepared). Illinois courts have held that "the Act is not designed to compel the compilation of data the governmental body does not ordinarily keep" and "does not compel the agency to provide answers to questions posed by the inquirer." *Kenyon v. Garrels*, 184 Ill. App. 3d 28, 32, 540 N.E.2d 11, 13 (4th Dist. 1989). "[T]here is no duty on a public body to create a record for purposes of the Act." *Workmann v. Illinois State Bd. of Educ.*, 229 Ill. App. 3d 459, 464, 593 N.E.2d 141, 145 (2nd Dist. 1992). The "Act is not intended to compel public bodies to interpret or advise requesters as to the meaning or significance of the public records." 5 ILCS 140/3.3. In the event that you are willing to confer and reduce/amend the request and the School District discloses any records, they will

be disclosed in whatever organizational structure they are presently stored and with the file names that they presently have.

**RIGHTS UPON DENIAL**

If you do not choose to confer and reduce the request to manageable proportions and amend your request in such a way that it will no longer be a voluminous request, you have a right to have this denial of your request reviewed by the Public Access Counselor ("PAC") at the Office of the Illinois Attorney General. 5 ILCS 140/9.5(a). You can file your request for review with the PAC by writing to:

Public Access Counselor  
Office of the Attorney General  
500 South 2nd Street  
Springfield, Illinois 62706  
Phone: 1-877-299-3642  
Fax: 217-782-1396  
E-Mail: [publicaccess@atg.state.il.us](mailto:publicaccess@atg.state.il.us)

If you choose to file a request for review with the PAC, you must do so within sixty calendar days of the date of this letter. 5 ILCS 140/9.5(a). Please note that, if you file a request for review with the PAC, you must include a copy of your original request (i.e. your email sent on December 3, 2014, and the document attached to it) and a copy of this letter. You also have the right to seek judicial review of this denial by filing a lawsuit in the Illinois circuit court in the county where the School District is located. 5 ILCS 140/11.

Very truly yours,

WHITT LAW LLC



Brian R. Bare  
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cc: Dr. Matthew Wendt, Superintendent